



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,488	04/26/2001	Vincent Pluvinage	RXSD1001-3	8079
22470	7590	04/26/2006	EXAMINER	
HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			BATES, KEVIN T	
			ART UNIT	PAPER NUMBER
			2155	
DATE MAILED: 04/26/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/830,488

Applicant(s)

PLUVINAGE ET AL.

Examiner

Kevin Bates

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 133-188 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 133-188 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9-10, 9-28, 1-25, 4-1</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Office Action is in response to a communication made on February 1, 2006.

The Information Disclosure Statements received September 10, 2001, September 28, 2001, January 25, 2002, and April 15, 2002 have been considered.

Claims 1-132 have been cancelled.

Claims 133 – 188 are pending in this application.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 134, 136, 142, 176, and 177 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 134 and 176, it is unclear how the device for producing the customized audio data seen in claim 133, functions with itself producing the customized audio data product, while receiving it from a remote site.

Regarding claims 136, 142, and 177, it is unclear where the hearing profile is stored, because in claim 133, it is located on the device and is further described in claim 136 as being on a remote site.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2155

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English Campbellage.

**Claims 133-147, 149-154, 157-169, 172-178, and 180-188 are rejected under 35 U.S.C. 102(e) as being anticipated by Campbell (6,212,496).**

**Regarding claims 133, 140, 146, and 180,** Campbell teaches a device for producing customized audio data (Column 2, lines 24 – 26), comprising:

data storage storing an audio data product (Column 3, lines 52 – 59), wherein the signal must be temporary stored on the device to allow it to be modified) and

a hearing profile of a customer for the audio data product (Column 4, lines 6 – 15); and

logic to produce a customized audio data product in response to the hearing profile and the audio data product (Column 3, lines 14 – 16).

**Regarding claim 152,** Campbell teaches an audio testing device comprising:

a data processor (Figure 1, element 115);

a data storage medium, coupled to the data processor (Figure 1, element 120);

a communication port, coupled to the data processor (Figure 1, element 105);

an audio transducer, coupled to the data processor (Figure 1, element 110); and

at least a portion of a hearing test program stored in the data storage medium, the hearing test program comprising routines for execution of a hearing test using the

communication port and the hearing test program to produce hearing profile data of a customer (Column 5, line 60 – Column 6, line 19).

**Regarding claim 167**, Campbell teaches an audio testing and playback device comprising:

- a data processor (Figure 1, element 115);
- data memory coupled to the data processor (Figure 1, element 120);
- a communication port, coupled to the data processor (Figure 1, element 105);
- an audio transducer, coupled to the data processor (Figure 1, element 110);
- a hearing test program stored in the data memory, the hearing test program comprising logic used for execution of a hearing test using the communication port to produce hearing profile data for use in production of a hearing profile of a customer (Column 5, line 60 – Column 6, line 19); and

- a customized audio data product stored in the data memory, the customized audio data product comprising an audio data product customized using the hearing profile (Column 3, lines 14 – 16);

**Regarding claim 174**, Campbell teaches a method for conducting a hearing test, comprising:

- providing a headset having stored therein audio test software (Column 2, lines 54 – 56);

- coupling the headset to a data processor having a user interface (Column 2, lines 46 – 49);

executing a test using the audio test software and the user interface to develop a hearing profile (Column 5, line 60 – Column 6, line 19);

producing a customized audio data product using the hearing profile (Column 3, lines 14 – 16); and

playing the customized audio data product on the headset (Column 2, lines 54 – 56).

**Regarding claims 134 and 176**, Campbell teaches the device of claims 133 and 174, including: an interface by which the customized audio data product is received from a remote site (Column 6, lines 39 – 43).

**Regarding claims 135 and 178**, Campbell teaches the device of claims 133 and 174, including: logic to store the customized audio data product on a machine readable medium (Column 3, lines 52 – 59).

**Regarding claims 136, 142, and 177**, Campbell teaches the device of claims 133 and 140, wherein the customized audio data product comprises at least a portion of the hearing profile, and the audio data product for transformation according to the hearing profile at a remote site (Column 6, lines 39 – 43).

**Regarding claims 137, 143, and 175**, Campbell teaches the device of claims 133, 140, and 174, wherein the customized audio data product comprises a transformation according to the hearing profile of the audio data product (Column 3, lines 14 – 16).

**Regarding claims 138 and 144**, Campbell teaches the device of claims 133 and 140, wherein the customized audio data product comprises a transformation according

to the hearing profile of the audio data product, and a parameter used for decoding the transformation (Column 3, lines 14 – 16).

**Regarding claims 139 and 145**, Campbell teaches the device of claims 133 and 140, wherein the customized audio data product comprises a transformation according to the hearing profile of the audio data product, and a parameter associated with the customer used for decoding the transformation (Column 4, lines 9 – 11).

**Regarding claims 141 and 149**, Campbell teaches the article of claims 140 and 146, wherein the customized audio data product comprises a transformation according to the hearing profile of the audio data product, and a parameter for identification of the customer (Column 4, lines 6 – 15).

**Regarding claims 147, 154, and 169**, Campbell teaches the audio data playback device of claims 146, 152, and 167, wherein the audio transducer comprises a speaker mounted on a headset (Column 2, lines 54 – 58).

**Regarding claim 150**, Campbell teaches the audio data playback device of claim 146, wherein the customized audio data product comprises a transformation according to the hearing profile of the audio data product, and a parameter associating the customized audio data product with the customer, and the data processor includes decoding logic responsive to the parameter for playing the customized audio data product (Column 4, lines 6 – 15).

**Regarding claim 151**, Campbell teaches the audio data playback device of claim 146, wherein the customized audio data product comprises at least a portion of the hearing profile, and the audio data product for transformation according to the

hearing profile, and the data processor includes decoding logic responsive to said at least a portion of the hearing profile for playing the customized audio data product (Column 4, lines 6 – 15).

**Regarding claims 153 and 168,** Campbell teaches the audio testing device of claims 152 and 167, wherein the communication port comprises a port for connection to an external data processing device providing a user interface for the hearing test program (Figure 1, element 105, Column 5, line 60 – Column 6, line 19).

**Regarding claims 157 and 172,** Campbell teaches the audio testing device of claims 152 and 167, including a battery, and wherein the data processor and audio transducer are coupled to the battery (Column 2, lines 30 – 33, wherein cellular phones inherently have batteries to allow them to be mobile).

**Regarding claims 158 and 173,** Campbell teaches the audio testing device of claims 152 and 167, including a headset, and wherein the data processor, data storage medium, communication port and audio transducer are mounted on the headset (Figure 1, wherein the device is a cellular device).

**Regarding claims 159 and 181,** Campbell teaches the audio testing device of claims 152 and 180, wherein the customer hearing profile comprises coefficients of a transfer function to transform an audio data product according a hearing characteristic of a customer (Column 4, lines 6 – 15).

**Regarding claims 160 and 182,** Campbell teaches the audio testing device of claims 152 and 180, wherein the customer hearing profile comprises an identifier of



transfer function to transform an audio data product according a hearing characteristic of a customer (Column 4, lines 9 – 11).

**Regarding claims 161 and 183**, Campbell teaches the audio testing device of claims 152 and 180, wherein the customer hearing profile comprises an identifier of a transfer function and coefficients of the identified transfer function to transform all audio data product according a hearing characteristic of a customer (Column 4, lines 6 – 15).

**Regarding claims 162 and 184**, Campbell teaches the audio testing device of claims 152 and 180, wherein the customer hearing profile includes a value indicating listening conditions in which a customized audio data product is to be played (Column 4, lines 6 – 15).

**Regarding claims 163 and 185**, Campbell teaches the audio testing device of claims 152 and 180, wherein the customer hearing profile includes a value indicating a hearing characteristic of a customer for whom a customized audio data product is to be played (Column 4, lines 6 – 15).

**Regarding claims 164 and 186**, Campbell teaches the audio testing device of claims 152 and 180, wherein the customer hearing profile includes a specification of psycho-acoustic characteristics of a customer for whom a customized audio data product is to be played (Column 4, lines 6 – 15).

**Regarding claims 165 and 187**, Campbell teaches the audio testing device of claims 152 and 180, wherein the customer hearing profile includes an audiogram characterizing a customer for whom a customized audio data product is to be played (Column 4, lines 6 – 15).

**Regarding claims 166 and 188**, Campbell teaches the audio testing device of claims 152 and 180, wherein the customer hearing profile includes software defining a transfer function for producing a customized audio data product (Column 4, lines 6 – 15).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 156, 171, and 179 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Jigour (5815426).**

**Regarding claims 156, 171, and 179**, Campbell teaches the audio testing device of claims 152, 167, and 174.

Campbell does not explicitly indicate a port adapted to couple a removable data storage device to the data processor, and resources for playing an audio data product stored in the removable data storage device.

Jigour teaches a mobile device that includes a removable data storage device for storing and playing audio product (Column 6, lines 30 – 39).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Jigour's teaching of a removable storage device in

Campbell's device in order to allow the mobile device to store audio clips and be able to move them from device to device easily.

**Claims 148, 155, and 170 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Adams (6594366).**

**Regarding claims 148, 155, and 170,** Campbell teaches the audio data playback device of claims 146, 152, and 167.

Campbell does not explicitly indicate that the audio transducer comprises stereo speakers mounted on a headset.

Adams teaches a mobile device (Column 2, lines 22 – 25) for playing audio product that includes supporting stereo output (Column 2, lines 54 – 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Adams' teaching of stereo output in Campbell's mobile device in order to allow the device to support audio and hardware meant for stereo sound.

#### ***Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U. S. Patent No. 6526287 issued to Lee, because it discloses a removable storage device.

U. S. Patent No. 6840908 issued to Edwards, because it discloses a hearing test system.

U. S. Patent No. 3974335 issued to Blackledge, because it discloses a local hearing test.

U. S. Patent No. 6463128 issued to Elwin, because it discloses customizing audio data based upon a profile.

U. S. Patent No. 6813490 issued to Lang, because it discloses having a hearing profile for cellphone communication stationed at remote locations, plus having a hearing test to calculate the profile.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (571) 272-3980. The examiner can normally be reached on 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/830,488

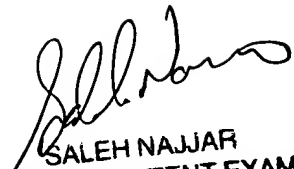
Page 12

Art Unit: 2155

KB

KB

March 15, 2006

  
SALEH NAJJAR  
SUPERVISORY PATENT EXAMINER